

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY LYNN NORWOOD,

Plaintiff,

No. CIV S-03-2554 GEB GGH P

vs.

EDWARD ALAMEIDA, JR., et al.,

Defendants.

ORDER

Introduction

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983. Pending before the court is 1) plaintiff's January 27, 2006, motion to compel further discovery; defendants filed an opposition, after which plaintiff filed a reply; 2) plaintiff also, by motion/declaration, filed on April 17, 2006, apparently pursuant to Fed. R. Civ. P. 56(f), asks the court to "postpone" or continue consideration of defendants' motion for summary judgment, filed on March 23, 2006,¹ for the filing of an opposition, based on plaintiff's not yet having received all of the discovery responses/production he has sought by his motion to compel.

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¹ Defendants filed an amended Table of Authorities in support of the summary judgment on March 24, 2006.

1 Second Amended Complaint

2 This action had been proceeding upon a first amended complaint, filed on April
3 26, 2004, against defendants Mike Knowles, S. J. Vance, J.P. Walker, T. Goughnour, M. Martel,
4 D. Willey.² Upon plaintiff's filing of a motion for leave to file a second amended complaint
5 along with a proposed second amended complaint, on June 7, 2005, the court ordered defendants,
6 who had previously filed an answer to the first amended complaint, to file a response, which they
7 did in the form of a statement of non-opposition. The court thereafter granted plaintiff leave to
8 file the second amended complaint and directed service of process upon one additional
9 defendant, Cheryl Pliler. See Orders, filed on August 4, 2005, and on October 6, 2005.

10 Plaintiff alleges that as an inmate at California State Prison - Sacramento (CSP-
11 Sac), he was subjected to four lockdowns, resulting in extended periods of deprivation of outdoor
12 physical exercise in violation of his Eighth Amendment rights, causing him physical and
13 psychological damage in the form of stress, depression, headaches and muscle cramps. Second
14 Amended Complaint (SAC), pp. 3-4. Inmates, including himself, were confined to double-bunk
15 cells 24-hours a day for seven days a week, with the exception of a five-minute shower period
16 every other day, excluding Sundays. SAC, p. 3.

17 From January 4, 2002, until November 4, 2003, black general population inmates
18 were deprived of outdoor exercise for fourteen out of twenty-two months, even when there was
19 no individual misconduct or showing of a propensity to escape. SAC, p. 4. The lockdowns
20 occurred as a result of prison staff having been stabbed, but impacted inmates who were
21 uninvolved in the incidents. SAC, pp. 4-5.

22 The first period of deprivation of outdoor exercise commenced on January 4,
23 2002, and ended on April 3, 2002, due to an alleged staff stabbing allegedly perpetrated by
24

25 ² This case was originally filed on December 15, 2003. Certain claims/defendants were
26 dismissed from the original complaint with leave to amend granted by Order, filed on March 25,
2004, after which plaintiff filed his now-superseded first amended complaint.

1 Mexican (Hispanic) inmates in dining hall two. SAC, p. 5. During that period a memorandum
2 rescinding outdoor exercise for inmates was circulated which was signed by defendant Steve
3 Vance, B-facility captain at CSP-Sac. Id. Then-warden, defendant Cheryl Pliler, not only must
4 have approved the excessive outdoor exercise deprivation, but also failed to intervene to prevent
5 the deprivation of outdoor exercise for a period of approximately thirteen weeks. Id. The lack
6 of exercise caused plaintiff to suffer anxiety, depression, stress, headaches and muscle cramps.
7 Id.

8 The second period of deprivation at CSP-Sac B-facility occurred from May 8,
9 2002, and extended until July 31, 2002, as a result of an alleged stabbing assault upon a
10 staffmember by a lone black inmate, who attacked his work supervisor. Memoranda were
11 circulated among inmates signed by defendant Vance and defendant Associate Warden T.
12 Goughnour, rescinding all outdoor exercise for the period set forth. Once again defendant Pliler
13 had to have approved the excessive deprivation of all outdoor exercise and failed to intervene to
14 prevent plaintiff's resultant suffering therefrom, again for an approximate thirteen-week period.
15 SAC, p. 5.

16 The third period of outdoor exercise deprivation occurred as a result of a melee on
17 the B-facility main exercise yard, wherein member or members of the staff were allegedly
18 stabbed and extended from December 28, 2002, until June 1, 2003. Memoranda rescinding all
19 outdoor exercise for this period were circulated among inmates and signed by defendant Vance
20 and defendant B-facility Associate Warden M. Martell. This was for an approximate twenty-
21 week period, and defendant Pliler once again must have approved it and failed to intervene to
22 prevent the suffering plaintiff experienced in the form of headaches, stress, anxiety, depression
23 and muscle cramps. SAC, p. 6.

24 The fourth period of deprivation of outdoor exercise, extended from September 3,
25 2003, until November 4, 2003, during which period plaintiff suffered from the conditions
26 previously set forth. Memoranda, signed by defendant D. Willey, B-facility captain of CSP-Sac,

1 and B-facility Associate Warden James P. Walker, circulated rescinding all outdoor exercise for
2 the period, due to a staff stabbing assault in CSP-Sac B-facility's housing block four. Defendant
3 CSP-Sac Warden Steve Knowles had to approve the continued lockdown and revocation of
4 outdoor exercise and failed to intervene to prevent plaintiff's suffering. SAC, p. 6.

5 Plaintiff's grievances were denied on the bases of safety and security and lack of
6 accommodations. Id. Plaintiff avers that CSP-Sac has three facilities, A, B, and C, each
7 containing eight individual housing units. All are designed for Level 4, 180 inmates. All cells
8 are the same size, including doors, windows, showers and dayroom. Other than each facility's
9 main exercise yard, each facility's individual housing unit is adjacent to a mini concrete yard,
10 which has a manned gun tower affording a view of the entire yard. SAC, p. 7.

11 Administrative Segregation (Ad Seg) inmates have access to the mini concrete
12 yard ten days after being placed in Ad Seg, regardless of the reason for such placement.
13 Inexplicably, however, programming general population (GP) inmates are deprived of access to
14 this yard for months at a time. SAC, p. 7. Plaintiff contends that GP inmates should have access
15 to the mini concrete yard once a facility has been searched throughout the investigation period.
16 Plaintiff alleges that the deprivations occurred not as a result of the four staff stabbing assaults,
17 which he believes will be proven to be "isolated and/or spontaneous," but as a form of retaliation
18 and punishment and not for safety, security reasons. Id.

19 Plaintiff contends that when administrators act on information it has received, as
20 on three occasions when information indicated "black affiliations" in a planned assault on staff,
21 the investigation takes from six to sixteen days, but when staff is involved (i.e., become victims)
22 of a stabbing assault, the investigation takes months. Prison staff have been able to search the
23 entire B-facility in a nine-to-eleven-day period when metal was missing on August 15, 2002 and
24 the search ended on August 26, 2002, but stabbings involving staff take months of searching.
25 SAC, p. 8. Plaintiff seeks injunctive relief and monetary damages.

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1 Background

2 The original scheduling order in this matter was filed on May 17, 2005, wherein
3 the discovery deadline was set for August 26, 2005. However, subsequently, plaintiff filed a
4 motion to be allowed to proceed upon a second amended complaint, as noted earlier. In the
5 August 4, 2005, order, granting plaintiff leave to proceed on the second amended complaint, the
6 court also vacated the deadlines in the scheduling order, extending, inter alia, the discovery
7 deadline, and deadline for filing motions to compel discovery, until October 21, 2005. By order,
8 filed on August 30, 2005, the parties were granted until November 21, 2005, to conduct
9 discovery. By order, filed on October 25, 2005, plaintiff was granted 60 days from the date the
10 new defendant, C. Pliler, was served to file a motion to compel discovery, which applied as well
11 to defendant Pliler's seeking discovery from plaintiff; as to the remaining defendants, the
12 November 21, 2005, discovery cut-off still applied. On December 1, 2005, due to an apparently
13 hastily arranged transfer of plaintiff, wherein he averred that he was separated from his legal
14 property, plaintiff was granted an extension of time until December 23, 2005, to file a motion to
15 compel as to all defendants but defendant Pliler, for whom the deadline with respect to her,
16 remained that set forth in the order, filed on October 25, 2005. According to plaintiff, prior to
17 the transfer from CSP-Sacramento to Calipatria State Prison, on November 7, 2005, he had been
18 informed that he would not be transferred until the pending litigation was resolved. The court
19 noted in its December 1, 2005, order, that plaintiff's unopposed request to serve additional
20 discovery, filed on June 29, 2005, was granted, by order filed on August 4, 2005, and plaintiff
21 was allowed to propound upon defendants, pursuant to Fed. R. Civ. P. 26(b)(2), interrogatories
22 26 through 44 in set one and interrogatories 1 through 22 in set two, which are in excess of the
23 25-interrogatory limit set by Fed. R. Civ. P. 33. By order filed on January 5, 2006, plaintiff was
24 denied leave to serve further additional requests upon defendant Willey.

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1 Motion to Compel

2 Plaintiff avers that he has raised claims under the Eighth and Fourteenth
3 Amendments. To the extent plaintiff appears to be claiming that the extended deprivation of
4 exercise was retaliatory, he also seems to be making a First Amendment claim. Nevertheless, the
5 gravamen of plaintiff's second amended complaint rests on his claims for violations of the Eighth
6 Amendment. By his motion he seeks further discovery as to all defendants with respect to his
7 first set of interrogatories and requests for production of documents, except defendant Pliler; only
8 in his reply does he appear to improperly bootstrap a request for an order compelling discovery as
9 to defendant Pliler in his motion seeking further discovery as the earlier served defendants. Any
10 request as to defendant Pliler in his reply must be denied, as not made in accordance to Fed. R.
11 Civ. P. 37(a), requiring reasonable notice to the party affected thereby.

12 As to his request for an order compelling further discovery as to defendants Mike
13 Knowles, S. J. Vance, J.P. Walker, T. Goughnour, M. Martel, D. Willey, plaintiff states that at
14 issue are his first set of interrogatories and of requests for production of documents propounded
15 as to each of them, and as to set two of the interrogatories and requests for production of
16 documents as to defendants Vance and Walker only. Motion to Compel (MTC), p. 1. Plaintiff
17 identifies the following of the responses to the first set of interrogatories propounded upon
18 defendants as at issue: Nos. 14 through 17, 25 through 28, 33 through 44. As to the second set of
19 interrogatories propounded upon defendant Vance, the answers to Nos. 9 through 12 and 20
20 through 22 are at issue. As to defendant Walker, the following from the second set of
21 interrogatories is at issue: No. 19. In addition, plaintiff states in the caption that his request to
22 compel (further) discovery as to each of these interrogatories is "combined with a request for
23 production of documents." However, plaintiff does not set forth specifically what requests for
24 production of documents are at issue. To the extent that he attempts to conflate requests for
25 production of documents and other tangible items with interrogatories, his motion with respect to
26 further production will be denied.

1 Opposition

2 Defendants move for denial of the motion on the grounds that plaintiff has failed
3 to file his motion in compliance with Local Rule 33-250(c), the relevant part of which directs a
4 party seeking an order with regard to discovery to file the interrogatories and answers at issue
5 with the motion and only those at issue. As defendants point out, plaintiff did not attach the
6 interrogatories at issue with his motion to compel, which was filed on January 27, 2006, but,
7 instead, on February 3, 2006, separately filed 135 pages related to his discovery requests without
8 targeting the responses he challenges in that filing. Within that voluminous filing plaintiff
9 includes, willy-nilly, correspondence from defendants' counsel to himself, supplemental
10 responses, and separately served verifications without focusing on the responses and the
11 interrogatories that are in dispute. Alternatively, defendants maintain they have responded
12 appropriately to the requests at issue, which specific arguments the court will consider where
13 appropriate in the discussion below.

14 Discussion

15 The scope of discovery under Fed. R. Civ. P. 26(b)(1) is broad. Discovery may be
16 obtained as to any unprivileged matter "relevant to the claim or defense of any party...." Id.
17 Discovery may be sought of relevant information not admissible at trial "if the discovery appears
18 reasonably calculated to lead to the discovery of admissible evidence." Id. The court, however,
19 may limit discovery if it "....is unreasonably cumulative or duplicative," or can be obtained from
20 another source "that is more convenient, less burdensome, or less expensive"; or if the party who
21 seeks discovery "has had ample opportunity by discovery ...to obtain the information sought"; or
22 if the proposed discovery is overly burdensome. Fed. R. Civ. P. 26(b)(2)(i)(ii) and (iii).

23 In his initial filing, plaintiff appears to have first set forth his efforts to resolve
24 discovery issues, appending to those filings his motion to compel. In that appended motion,
25 however, plaintiff did write out the specific interrogatories, and, to a limited extent, the responses
26 to which he objects. Although he did not include the exact responses, he indicated the objections

made. Even though plaintiff did not strictly comply with the applicable rule and plaintiff's haphazard method of putting together his motion in parts is onerous for both defendants and the court, the undersigned finds that plaintiff has adequately identified the interrogatories at issue herein.

With respect, however, to any request for production of documents, plaintiff has failed in his motion to specifically identify any such requests; therefore, pursuant to Local Rule 34-250(c), plaintiff has failed to comply with the applicable rule which requires that "only that part of the request for production, response, or proof of service that is in issue shall be filed." Thus, the court will deny plaintiff's motion with respect to requests for production of documents, to the extent he made any such motion and will proceed only to adjudicate the motion as to the interrogatories he identified.

First Set of Interrogatories:

No. 1: Throughout the January 4, 2002 lockdown at CSP-Sac B-facility until its conclusion of April 3, 2002, how many black inmates were placed in administrative segregation and/or referred to the district attorney for their involvement in the January 4, 2002 incident at CSP-Sac B facility? After providing the written answer, would you forward the names and prison identification number to the court for an in camera hearing? Also would you provide the CDC 115 disciplinary report?

Response: Defendants object to this interrogatory on the ground that it seeks information and documents that are irrelevant to the claims and defenses in this lawsuit. Defendants further object to the request on the ground that it is vague and uncertain as to time, and that it is overbroad and unduly burdensome. Defendants further object on the ground that it seeks information and documents concerning other inmates that are confidential in nature. The Department of Corrections, as custodian of prison records, has a duty to safeguard the privacy of inmates' prison files. See Board of Trustees v. Superior Court (1981) 119 Cal. App.3d 516, 524-25. Inmates' privacy rights are protected under the state and federal constitutions. (Id.)

Plaintiff argues that he seeks the information about the initial lockdown to show that prison officials went on a fishing expedition and that no black inmates were involved in any incident. He also contends that the CDC 115 disciplinary report will show that the incident was

1 isolated or spontaneous and will give the name and badge number of the correctional officer, so
2 that plaintiff might be able to call him as a witness to describe how the incident transpired.
3 MTC, pp. 13-14.

4 Defendants argue that plaintiff is alleging that he was deprived of outdoor
5 exercise during various Facility B lockdowns but his interrogatory is directed to the number of
6 black inmates placed in ad seg and/or referred to the district attorney for involvement in the
7 incident leading to the January 4, 2002, lockdown. In addition to reiterating their objections,
8 they also state that there was no basis for forwarding documents to the court for an in camera
9 hearing at the time plaintiff served his interrogatories. Opp., p. 5.

10 In reply, plaintiff maintains that an essential part of his allegations, seeking
11 punitive damages, is that the deprivation of physical exercise was retaliatory, although he does
12 not set forth the requisite predicate for a claim of retaliation. Reply, p. 2.

13 As the undersigned has noted before, this action proceeds primarily upon
14 plaintiff's claim for a violation of his rights under the Eighth Amendment. To the extent that
15 plaintiff may have attempted to frame any claim for retaliation in his second amended complaint,
16 he has not adequately set it forth. In order to state a retaliation claim, a plaintiff must plead facts
17 which suggest that retaliation for the exercise of protected conduct was the "substantial" or
18 "motivating" factor behind the defendant's conduct. Soranno's Gasco, Inc. v. Morgan, 874 F.2d
19 1310, 1314 (9th Cir. 1989); Rizzo 778 F.2d at 532. The plaintiff must also plead facts which
20 suggest an absence of legitimate correctional goals for the conduct he contends was retaliatory.
21 Pratt at 806 (citing Rizzo at 532). Verbal harassment alone is insufficient to state a claim. See
22 Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987). However, even threats of bodily
23 injury are insufficient to state a claim, because a mere naked threat is not the equivalent of doing
24 the act itself. See Gaut v. Sunn, 810 F.2d 923, 925 (9th Cir. 1987). Mere conclusions of
25 hypothetical retaliation will not suffice, a prisoner must "allege specific facts showing retaliation
26 because of the exercise of the prisoner's constitutional rights." Frazier v. Dubois, 922 F.2d 560,

1 562 (n.1) (10th Cir. 1990).

2 In Pratt, the Ninth Circuit concluded that in evaluating retaliation claims, courts
3 should defer “to prison officials in the evaluation of proffered legitimate penological reasons for
4 conduct alleged to be retaliatory.” Pratt, 65 F.3d at 807 (citing Sandin v. Conner, 515 U.S. 472,
5 115 S. Ct. 2293 (1995)).

6 In this case, plaintiff has not met the threshold requirement of setting forth any
7 constitutionally protected conduct that he exercised for which he allegedly suffered any
8 retaliation. This action remains one proceeding under the Eighth Amendment. The claim upon
9 which plaintiff proceeds is that he, as a general population inmate of Facility B, has been
10 subjected to repeated extended deprivations of his right to outdoor physical exercise that are
11 unconstitutional, i.e., he has been subjected to cruel and unusual punishment. The court sees no
12 basis for requiring a further response as to this interrogatory. Interrogatory no. 15 seeks the same
13 information with respect to the second lockdown period, from May 8, 2002, until July 31, 2002,
14 and will be denied for the same reasons.

15 No. 16: Would you provide to both plaintiff and the court a video
16 tape of the December 28, 2002 melee that occurred at CSP-Sac B
17 facility’s main exercise yard in which staff were allegedly
18 assaulted? Could you also provide the names of the inmates who
19 were either transferred, placed in administrative segregation or
20 referred to the District Attorney for prosecution in relation to the
21 December 28, 2002 staff assault at CSP-Sac B facility? Also
22 would you provide the CDC 115 disciplinary reports?

23 Response: Defendants object to this interrogatory on the ground
24 that it seeks information and documents that are irrelevant to the
25 claims and defenses in this lawsuit. Defendants further object on
26 the ground that it seeks information and documents concerning
other inmates that are confidential in nature. The Department of
Corrections, as custodian of prison records, has a duty to safeguard
the privacy of inmates’ prison files. See Board of Trustees v.
Superior Court (1981) 119 Cal. App.3d 516, 524-25. Inmates’
privacy rights are protected under the state and federal
constitutions. (Id.)

25 Plaintiff avers that the videotape “is the most compelling piece of evidence which
26 demonstrates isolation and/or spontaneity.” MTC, p. 15. He also contends that inmate

1 statements will show “isolation and/or spontaneity.” Id. Defendants re-assert their argument
2 that the videotape of the December 28, 2002, melee is not relevant to plaintiff’s claim of denial
3 of outdoor exercise, nor is it reasonably calculated to the discovery of admissible evidence
4 related to the claim or to the defenses in this action. Opp., p. 6. In his reply, plaintiff argues that
5 the court can protect inmates’ privacy, that inmates being prosecuted for their roles in assaults do
6 not have privacy rights, that plaintiff is alleging that the deprivation period was a means of
7 retaliation.

8 Once again, however, the court must agree with defendants that retaliation is *not*
9 the basis of plaintiff’s allegations as set forth in the second amended complaint, but the
10 deprivation of outdoor exercise constitutes the basis of his complaint. Defendants are correct
11 that a videotape of the actual incident that precipitated the December 28, 2002, lockdown is not
12 reasonably calculated to the discovery of admissible evidence related to plaintiff’s claim. The
13 motion as to this request will be denied. In Interrogatory No. 17, plaintiff seeks the same
14 information with respect to any involvement in the incident giving rise to the fourth lockdown
15 period by any black inmate and the motion as to this request will be denied for the same reasons
16 articulated for the denial of plaintiff’s motion as to responses to Interrogatories no. 14 and no 15.

17 In Interrogatory No. 25, plaintiff asks if defendant Vance contends that
18 information provided by informants prolonged the period of deprivation of outdoor exercise from
19 January 4, 2002-April 3, 2002, and if so, seeks the names and identification numbers of any such
20 informants to the court, along with any procedure used to determine the reliability of the
21 information. Defendants object on the grounds of irrelevance and on the basis of confidentiality
22 and privilege.

23 In his motion, plaintiff states that he does not need the names of any informant but
24 seeks any information provided by an informant and the basis for determining the reliability of
25 the information. MTC, p. 16. He objects also to defendants’ failure to even respond by
26 indicating that an informant did or did not provide information. In their response to this request,

1 defendants indicate that upon further review that plaintiff by this request was seeking potentially
 2 relevant information and thus supplemented their response. However, by their supplemental
 3 response, defendants do not supplement the response to the interrogatory that plaintiff has
 4 identified as no. 25 in his motion, but rather supplement the interrogatory plaintiff has numbered
 5 as 26 in his motion.³ Therefore, although defendants have represented that the interrogatory
 6 concerning the January 4, 2002 - April 3, 2002 lockdown period has been supplemented but have
 7 apparently failed to do so, they will be directed to do so in the manner that they have
 8 supplemented Nos. 26 through 28.

9 No. 26: Do defendants S.J. Vance and T. Goughnour contend that
 10 it was information from informants that prolonged the outdoors
 11 exercise period [sic] throughout the May 8, 2002 - July 13, 2002
 12 lockdown? If so, would you provide their names and identification
 13 number to the court along with the necessary screening procedure
 14 that was employed in order to deem the informants reliable, along
 15 with the information the informant provided?

16 Initially, defendants objected to this interrogatory because plaintiff had exceeded
 17 the permissible number of interrogatories under Fed. R. Civ. P. 33(a). However, as noted earlier,
 18 the court granted plaintiff leave to serve additional interrogatories in an unopposed request.

19 Supplemental Response (by defendants Vance & Goughnour):
 20 Defendant objects to this interrogatory on the grounds that it is
 21 vague and ambiguous [sic] what plaintiff defines as "prolonged,"
 22 and seeks confidential information about other inmates which if
 23 disclosed may place those inmates at risk of harm and threaten the
 24 safety and security of the institution. Therefore, to the extent
 25 plaintiff seeks the names or identities of any confidential
 26 informants, that information will not be provided.

Notwithstanding these objections, on May 8, 2002, an inmate in B
 facility brutally attacked an officer with a weapon. As a result of
 the attack, the facility was placed on lock-down status pending an
 investigation into the attack. A thorough investigation must be
 completed before un-locking the facility. The investigation
 includes, staff, witness, and inmate interviews, a search of the
 grounds for additional weapons, and completion of relevant

³ Apparently there is some confusion in the numbering because plaintiff apparently
 numbered two different interrogatories as no. 11, after which defendants noted the actual number
 and plaintiff's numbering side by side.

1 reports. While confidential information may have been provided
2 or uncovered during the course of the investigation, the duration of
the lock-down is based on how long it took to complete the
3 investigation and reach the determination that it is safe to un-lock.

4 Furthermore, the two month lockdown can hardly be referred to as
a "prolonged" [sic] given the nature and severity of the incident.
5 While every lock-down is different and the durations may vary,
prior to unlocking a facility, the investigation must be complete
6 and staff must be satisfied that it is safe to unlock the facility.

7 Plaintiff posits his dissatisfaction with this response to Interrogatory No. 26 in his
8 reply as well as to the response to No. 25 and supplemental responses to Nos. 27 and 28.

9 No. 27: Do defendants S.J. Vance and M. Martel contend that it
was information provided by informants that the deprivation period
10 of outdoor exercise from December 28, 2002 - June 1, 2003? If so,
would you provide the names and prison identification number to
11 the court along with the necessary screening procedure that was
employed in order to deem the informants reliable, along with the
12 information the informants provided?

13 Supplemental Response (by defendants Vance & Martel):
Defendant objects to this interrogatory on the grounds that it is
14 vague and ambiguous [sic] what plaintiff defines as "prolonged,"
and seeks confidential information about other inmates which if
15 disclosed may place those inmates at risk of harm and threaten the
safety and security of the institution. Therefore, to the extent
16 plaintiff seeks the names or identities of any confidential
informants, that information will not be provided.

17 Notwithstanding these objections, on December 28, 2002,
18 Correctional Sergeant Murphy was brutally attacked by a large
number of black inmates while on the B facility main exercise
19 yard. While responding to the vicinity where Sergeant Murphy
was being assaulted, Sergeant Graham was also rushed by three
20 inmates who then proceeded to brutally assault him as well.
Responding staff was also attacked by various other inmates while
21 attempting to calm down the incident and stop the attacks on the
[sic] Sergeant Murphy and Sergeant Graham. A total of six
22 inmate-manufactured weapons were recovered during the incident.

23 As a result of the attacks, the facility was placed on lock-down
status pending an investigation into the attack. A thorough
24 investigation includes staff, witness, and inmate interviews, a
search of the grounds for additional weapons, and completion of
25 the relevant reports. While confidential information may have
been provided, the duration of the lock-down was based on the
26 amount of time it took to complete the investigation.

1 While every lock-down is different and the durations may vary,
2 prior to unlocking the facility, the investigation must be complete
and staff must be satisfied that it is safe to unlock the facility.

3 No. 28: Do defendants D. Willey and J.P. Walker contend that it
4 was information provided by informants that prolonged the
5 outdoors exercise period [sic] throughout the September 3, 2003 -
6 November 4, 2003 lockdown? If so, would you provide names and
7 identification number to the court along with the necessary
screening procedure that was employed in order to deem the
8 informants reliable, along with the information the informants
9 provided?

10 Supplemental Response (by defendant Walker): Defendant objects
11 to this interrogatory on the grounds that it is vague and ambiguous
12 [sic] what plaintiff defines as "prolonged," and seeks confidential
13 information about other inmates which if disclosed may place
14 those inmates at risk of harm and threaten the safety and security of
15 the institution. Therefore, to the extent plaintiff seeks the names or
16 identities of any confidential informants, that information will not
17 be provided.

18 Notwithstanding these objections, on September 3, 2003, an inmate
19 in B Facility brutally attacked and slashed an officer with a
20 weapon. As a result of the attack, the facility was placed on lock-
21 down status pending an investigation into the attack. A thorough
22 investigation must be completed before unlocking the facility. The
23 investigation includes staff, witness, and inmate interviews, a
24 search of the grounds for additional weapons, and completion of
25 relevant reports. While confidential information may be provided
26 by inmates, the duration of the lock-down is based on the duration
of the investigation.

The two month lockdown can hardly be referred to as a
"prolonged" [sic] given the nature and severity of the incident.
While every lock-down is different and the durations may vary,
prior to unlocking a facility, the investigation must be complete
and staff must be satisfied that it is safe to unlock the facility.

21 Plaintiff repeatedly attempts to shore up a claim of retaliation, upon which this
22 action does not proceed. A passing reference in his second amended complaint alleging that
23 certain conduct is punitive or retaliatory actions wherein the focus of the allegations is that
24 plaintiff has been unconstitutionally deprived of outdoor physical exercise does not constitute a
25 claim of retaliation, as previously explained. The court will not order further responses to these
26 interrogatories.

1 As to Interrogatory Nos. 33-44, each seeks information as to each defendant with
2 respect to whether or not any of them have been accused of misconduct by staff or inmates,
3 whether any reprimands have been received or whether any defendant has ever been placed on
4 probation. None of plaintiff's inquiries are reasonably calculated to lead to the discovery of
5 admissible evidence as to his Eighth Amendment claim and will be denied.

6 Plaintiff's motion with respect to Interrogatory Nos. 9, 10 and 11 of the second set
7 of Interrogatories directed to defendant Vance seek information to show that cell searches
8 conducted for staff assaults take longer than those conducted for any other reason. MTC, pp. 19-
9 20. Defendant Vance indicates his intent to supplement his responses to the extent that specific
10 information becomes available as to Interrogatory Nos. 9, 10 and 11 with regard to when the first
11 cell search and last cell search occurred in Facility B, during the lockdown periods following the
12 the incidents on January 4, 2002, May 8, 2002, and December 28, 2002. Opp., pp. 8-9. In any
13 event, it appears that plaintiff seeks information regarding the number or length of time of cell
14 searches in an apparent effort to show that such searches are based on a retaliatory motive. The
15 motion as to these requests will be denied. Equally irrelevant to the claim upon which this action
16 proceeds is plaintiff's Interrogatory No. 12, seeking information as to the length of time taken to
17 conduct a search in B Facility for missing metal on August 12, 2004, or for weaponry on January
18 3, 2005, and on October 12, 2004.

19 As to Interrogatories 20-22, defendant Vance, after interposing objections,
20 provided a substantive response to plaintiff's questions as to whether the alleged perpetrators
21 were being prosecuted in state court for the January 4, 2002, May 8, 2002, and December 28,
22 2002, staff stabbing assaults. Plaintiff's motion as to these requests will be denied.

23 In Interrogatory No. 19, in the second set of interrogatories directed to defendant
24 Walker, plaintiff asks the defendant what a mini-concrete yard is used for. He also asks
25 defendant to produce photographs of the B Facility mini-concrete yards at CSP-Sac. In response,
26 defendant Walker, after interposing objections states: "mini yards have been used when

1 necessary to provide certain inmates with an area to exercise when the inmate's presence on the
2 mainline could pose a threat to the safety or security of the inmate, other inmates, or staff. The
3 mini concrete yards are too small to accommodate a yard program with large numbers of
4 inmates." Defendant has responded to plaintiff's question. It is inappropriate to ask defendant to
5 produce photographs as part of an interrogatory, or to combine a request for production of
6 documents with an interrogatory. Moreover, defendant, inter alia, objects to plaintiff's request
7 that defendant take photos for plaintiff, a responsibility plaintiff cannot properly place on him.
8 The motion as to this request will be denied.

9 Motion to Continue Consideration of Summary Judgment Motion

10 In his motion/declaration filed, evidently made pursuant to Fed. R. Civ. P. 56(f),
11 plaintiff asks the court to "postpone" or continue consideration of defendants' motion for
12 summary judgment, filed on March 23, 2006, so that he may have time to file an opposition,
13 based on his not yet having received all of the discovery responses/production he has sought by
14 his motion to compel. Notwithstanding the request for postponement of consideration of
15 defendants' dispositive motion, plaintiff having been previously granted an extension of time to
16 file his opposition to the summary judgment motion, proceeded to file an opposition, on May 12,
17 2006, of more than 680 pages, absurdly excessive and burdensome upon the court even in light
18 of the fact that he includes in it such superfluous material as a copy of the dispositive motion
19 itself. Nevertheless, because the court has directed defendant Vance to provide the supplemented
20 response to Interrogatory No. 25, of the first set of interrogatories, the court will allow plaintiff to
21 file a supplemental opposition, should he choose to do, as set forth below.

22 Accordingly, IT IS ORDERED that:

23 1. Plaintiff's January 27, 2006, motion to compel further responses and
24 production of documents is denied as not made in compliance with Local Rule 34-250(c).

25 2. Plaintiff's request for discovery responses made with respect to defendant
26 Pliler, raised only in the reply, is denied as made without adequate notice to defendants, thus

1 failing to comply with Fed. R. Civ. P. 37(a).

2 3. Plaintiff's January 27, 2006, motion to compel further discovery with respect
3 to defendant Vance's answer to plaintiff's Interrogatory No. 25 in the first set of interrogatories,
4 the question concerning the January 4, 2002-April 3, 2002, lockdown period, which defendant
5 Vance indicates has been supplemented but does not appear to have been, is granted to the extent
6 that defendants have provided supplemented responses to interrogatories regarding the other
7 lockdown periods, and the supplemented response must be served upon plaintiff within 15 days,
8 along with a filing in this court indicating the supplemented response has been served.

9 4. As to plaintiff's January 27, 2006, motion to compel further discovery with
10 respect the remaining interrogatories propounded upon defendants Mike Knowles, S. J. Vance,
11 J.P. Walker, T. Goughnour, M. Martel, D. Willey, the motion is denied.

12 5. Plaintiff's January 27, 2006, motion to compel further discovery with respect
13 to defendants' answers to his second set of interrogatories propounded upon defendants Vance
14 and Walker is denied.

15 6. Plaintiff's motion, filed on April 17, 2006, pursuant to Fed. R. Civ. P. 56(f),
16 for consideration of defendants' motion for summary judgment, filed on March 23, 2006, to be
17 continued is granted only to the extent that plaintiff will be allowed, should he choose to do so,
18 to file a supplemental opposition to the dispositive motion within 30 days of service upon him of
19 defendant Vance's supplemented response to Interrogatory No. 25 of the first set of
20 interrogatories.

21 DATED: 9/20/06

/s/ Gregory G. Hollows

22 GREGORY G. HOLLOWES
23 UNITED STATES MAGISTRATE JUDGE

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